IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6259 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BIMALBHAI M PRAJAPATI

Versus

STATE OF GUARAT

Appearance:

1. Criminal Misc.Application No. 6259 of 2001

MR MAYANK VORA for Petitioner No. 1

MR AJ DESAI LD. ADDL.PUBLIC PROSECUTOR for Respondent No. 1

MR KS JHAVERI for Respondent No. 1

..... for Respondents No. 2-4

NOTICE SERVED BY DS for Respondent No. 5

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 11/03/2002

ORAL JUDGEMENT

#. Rule. Mr.A.J.Desai, learned APP waives service of rule on behalf of respondent Nos.1 and 2. Mr.K.S.Jhaveri appears for remaining respondents and waives service of rule on their behalf.

#. By consent of the learned advocates for the parties this matter is being heard and disposed of finally.

#. During the course of hearing it is transpired that the present petitioner had filed complaint before the JMFC, Kalol in Mehsana District, who referred the same to the Police Station for investigation under Section 156(3) of the Criminal Procedure Code. After investigation, the Investigating Officer filed a report seeking A-Summary. It seems that the learned Magistrate accepted the said report and granted A-Summary as prayed for by the Investigating Officer.

#. Feeling aggrieved by the said order of the learned Magistrate the petitioner - original complainant has preferred this petition before this Court. It has been contended here that the trial Court has not applied its mind before passing the order granting A-Summary. It is also contended that the learned Magistrate had not heard the petitioner before granting A-Summary and, therefore, the order of the learned Magistrate is illegal and deserves to be set aside. The petitioner has, therefore, prayed to set aside the said order of the learned Magistrate.

#. During the course of hearing it is transpired that the petitioner was not heard before the learned Magistrate passed the impugned order granting A-Summary as prayed by the Investigating Officer. It seems that since the Court was moved by the present applicant original complainant, he was required to be heard before passing the order in question. Therefore, to that extent the order appears to be illegal on the face of it. In that view of the matter it is not necessary to go into the factual aspect of the merits of the case.

#. For the reasons stated above this application is allowed. The order passed by the learned Magistrate is set aside. The matter is remanded back to the learned Magistrate for passing appropriate order on merits according to law after providing opportunity to the parties to make their submission. The trial Court will naturally issue notice to the parties before finally disposing of the matter. Rule is made absolute to the above extent.

(D.P. BUCH, J.)

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